Supreme Court, U.S.
FILED
DEC 13 1994
OFFICE OF THE CLERK

No. 94-714

In The

Supreme Court of the United States

October Term, 1994

IN RE: ESTATE OF HERBERT JOHN GLEASON, a/k/a JACKIE GLEASON, Deceased,

KENNETH E. RAINE, as Trustee of the Television Trust Agreement,

Petitioner,

v.

MARILYN GLEASON, formerly Personal Representative of the Estate of Herbert John Gleason, a/k/a Jackie Gleason,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal Of Florida, Fourth District

RESPONDENT'S BRIEF IN OPPOSITION

DANIEL S. PEARSON
Counsel of Record
LUCINDA A. HOFMANN
HOLLAND & KNIGHT
701 Brickell Avenue
Miami, Florida 33131
(305) 374-8500

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

RESTATEMENT OF QUESTION PRESENTED

Whether a state probate court is required to reopen a closed estate to permit the filing of a limitations-barred claim by a putative creditor who had notice and knowledge of the estate administration proceedings, who did not move under an available probate rule for an extension of time to file a claim during the three years the estate was open but waited until fourteen months after the estate had been closed, the assets distributed, and the personal representative discharged before taking any action.

TABLE OF CONTENTS

Page

RESTATEMENT OF QUESTION PRESENTED..... i

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES..... iii

NOTE ON STATUTES AND RULES..... 2

RESTATEMENT OF THE CASE..... 2

REASONS WHY THE PETITION SHOULD BE DENIED..... 4

A. Raine's Petition Raises No Question Concerning Any Constitutional Deficiency in Florida's Probate Law..... 4

B. The Florida Courts Fairly Decided this Case on its Unique Facts and Circumstances..... 7

C. Even If the Probate Court Had Reopened the Estate, Raine's Claim Would Have Been Barred by the Florida Statute of Limitations for Contract Claims..... 8

CONCLUSION..... 9

TABLE OF AUTHORITIES

Page

CASES

Burgis v. Burgis, 611 So. 2d 594 (Fla. Dist. Ct. App. 1993) 5, 6

Morse v. Morse, 30 B.R. 52 (1st Cir. 1983) 8

Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478 (1988) 4, 5, 6

FLORIDA STATUTES

Section 95.11(2)(b), Florida Statutes (1991) 9

Section 733.702(3), Florida Statutes (1991) 5

Section 733.712(4)(a), Florida Statutes (1991) 10

FLORIDA PROBATE RULES

Florida Probate Rule 5.240 10

Florida Probate Rule 5.495 ..... 3, 5, 10

In re Rules of Probate and Guardianship Procedure, 537 So. 2d 500 (Fla. 1988) 6

No. 94-714

In The

Supreme Court of the United States

October Term, 1994

IN RE: ESTATE OF HERBERT JOHN GLEASON, a/k/a JACKIE GLEASON, Deceased,

KENNETH E. RAINE, as Trustee of the Television Trust Agreement,

Petitioner,

v.

MARILYN GLEASON, formerly Personal Representative of the Estate of Herbert John Gleason, a/k/a Jackie Gleason,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal Of Florida, Fourth District

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, Marilyn Gleason, respectfully requests this Court to deny the Petition for Writ of Certiorari, which seeks review of the Fourth District Court of Appeal of Florida's affirmance of a dismissal with prejudice entered by a Florida probate court. The decision below is reported at 631 So. 2d 321 (Fla. Dist. Ct. App. 1994) and is reprinted in the appendix to the Petition.

NOTE ON STATUTES AND RULES

The relevant Florida Statutes and Probate Rules are reprinted in the Appendix at App. 1a-6a.

RESTATEMENT OF THE CASE

In 1986, the petitioner, Kenneth E. Raine, as trustee of the Television Trust Agreement, sued Jackie Gleason and a corporate defendant in New York state court for breach of the agreement. When Gleason died the next year, his widow Marilyn was appointed in Florida as personal representative of his estate. On July 20, 1987, in accordance with existing Florida law, the first notice of the administration of the estate was published. Therefore, by law, the period for filing claims against the estate ended on October 20, 1987.

After Gleason's death and while the estate was open, Raine moved to substitute the personal representative Marilyn as a defendant in his New York action. The New York court denied the motion in September of 1989 because Raine had not submitted documentary evidence to support his motion. Raine again moved for substitution in February of 1990. This time he submitted documentary evidence of Marilyn's appointment. The documentary evidence, from the Florida probate court's files, included the Letters of Administration dated July 7, 1987 appointing Marilyn as personal representative of the estate. This document was stamped "This Estate Must Be Closed Within 12 Months if Not Contested." The evidence also included an Order Extending Time for Filing Final

Accounting and Petition for Discharge. The New York court granted the substitution.

Even though he had obtained these Florida probate court records and filed them in support of his New York motion for substitution – and thus was unquestionably aware that Gleason's estate was being probated in Florida – Raine never filed a claim in Gleason's estate and never sought an extension of time to file such a claim.

In November of 1990, more than three years after being appointed, Marilyn was discharged as personal representative and the estate was closed. Fourteen months later, in March of 1992, Raine filed a Petition for Further Administration of Estate in the Florida probate court, requesting that the order discharging Marilyn be vacated, that Marilyn be reinstated, and that Letters of Administration be reissued. Raine wanted the estate reopened so that he could file a claim in the reopened proceedings in order to pursue against the estate the action on which he had originally sued Gleason.

Marilyn moved to dismiss the petition to reopen the estate on the ground that Raine's claim was barred by Florida's nonclaim statute, and that even if his claim was not barred by the nonclaim period, it was barred by Florida's statute of limitations for contract claims. The probate court dismissed Raine's petition on the ground that since Raine was aware of the pendency of the probate proceedings while the estate was still open he should have petitioned for an extension of time to file his claim under Florida Probate Rule 5.495 instead of requesting a reopening and further administration of the estate well after it had been closed. The probate court,

observing "that the claim of Mr. Raine would be barred [by the statute of limitations] even if this Court were to allow the estate to be reopened and the claim to be filed," concluded, however, that it was unnecessary to rule on that contention. (Pet. App. C-10 n.7.)

Raine appealed to the Fourth District Court of Appeal of Florida, which affirmed the probate court's decision because, among other things, Raine failed "to do anything in the Florida estate until 14 months after it was closed." (Pet. App. A-4.) The Supreme Court of Florida declined to review the case. (Pet. App. B-1.)

REASONS WHY THE PETITION SHOULD BE DENIED

A. Raine's Petition Raises No Question Concerning Any Constitutional Deficiency in Florida's Probate Law

Raine says he was entitled to actual notice of the three-month nonclaim period and since he did not get it, the Florida probate court should have reopened the estate so that he could file his claim. At the time Gleason's estate was opened in 1987, Raine was not sent actual notice of the three-month nonclaim period because such notice was not required under Florida law at the time and *Tulsa Professional Collection Servs., Inc. v. Pope*,[1] addressing the requirement of such notice, had not yet been decided by this Court. By the time *Pope* was decided, the nonclaim period had long since expired, so notice of it would have

[1] 485 U.S. 478 (1988).

been useless to Raine except to alert him to something he admits he knew, that the estate was being administered.

Moreover, this case contains no violation of *Pope*. Had Raine's claim been barred by the running of the nonclaim period because Florida had not revised its statutes and rules to accommodate the due process concerns of *Pope* at the time Raine learned of the estate administration proceedings, then Raine could contend that *Pope* was violated. But, in response to *Pope*, Florida *had* changed its probate law and instituted new procedures that would have enabled Raine to preserve his claim in the estate, if only he had used those procedures.

The most significant change for our purposes was the enactment of Florida Probate Rule 5.495. This rule allowed "known or ascertainable" creditors, who had not received the actual, written notice *Pope* required, to petition for an extension of time to file claims in an estate and bring their claims late.

Florida Probate Rule 5.495, provides in pertinent part:[2]

> **RULE 5.495. PETITION TO EXTEND TIME FOR FILING CLAIM**
>
> If a creditor of the estate files a petition to extend the time for filing a claim, after the time

---

[2] *See* App. 1a-2a for entire rule and committee notes. This rule was deleted effective October 1, 1991, when the right to petition for an extension of time to file a claim became statutory. *See* section 733.702(3), Florida Statutes (1991), App. 2a. *See also Burgis v. Burgis*, 611 So. 2d 594 (Fla. Dist. Ct. App. 1993).

> allowed by law for presenting claims, or a petition to require payment of claim, which claim was filed after the time allowed by law for presenting claims, and the petition alleges that the creditor was known to or reasonably ascertainable by the personal representative, but was not served with a copy of the notice of administration, such petition shall specifically allege facts showing that such creditor was known to or reasonably ascertainable by the personal representative.

In re Rules of Probate and Guardianship Procedure, 537 So. 2d 500, 549-550 (Fla. 1988). Rule 5.495 became effective in January of 1989 – eight months after *Pope* was decided. The purpose of the rule was to save just such claims as Raine's:

> The enactment of Rule 5.495 reflects the intent of the [Florida] Supreme Court to allow late claimants without notice to pursue their claims in the probate action in accordance with the due process concerns expressed in *Pope*.

Burgis v. Burgis, 611 So. 2d 594, 596 (Fla. Dist. Ct. App. 1993).

Raine did not avail himself of this new procedure, although he was represented by counsel in his New York action and knew that Gleason had died, the estate was being probated, Marilyn was the personal representative, and that closure of the estate was imminent. Had Raine taken advantage of this rule before the estate was closed in November of 1990, his claim might have been preserved.

Thus, Raine's petition to this Court raises no question of a state law's constitutional deficiency but instead raises a purely personal and individual complaint.

B. The Florida Courts Fairly Decided this Case on Its Unique Facts and Circumstances

This case is fact-specific and Raine merely seeks a forum in which to argue that, on the facts, the Florida state courts erroneously ruled against him.

The unique facts of this case show that: the "known or ascertainable" putative creditor, Raine, obtained from the Florida probate court documentary proof that the estate was being administered; Florida's probate law provided for petitions to extend the time to file a late claim; Raine did not use this procedure although he had legal representation throughout the relevant time period; and it was not until fourteen months after the estate was closed that Raine sought to reopen the estate and have the personal representative reappointed in order to bring a contract claim that was arguably barred by the statute of limitations.

Raine, while admitting that he had actual *knowledge* of the estate administration proceedings, insists that he was not required to take any action in Florida to protect his claim because he never received actual, written notice from Marilyn of the long-since-expired nonclaim period. However, as the Florida courts correctly concluded, Raine was not free to bury his head, with this knowledge in it, until fourteen months after the estate had been closed, the personal representative discharged, and the estate

assets distributed. Their conclusion, of course, was rooted in the time-honored rule that

> [i]f a party has knowledge of such facts as would lead a fair and prudent man, using ordinary caution, to make further inquiries, and he avoids the inquiry, he is chargeable with the notice of the facts which by ordinary diligence he would have ascertained. He has no right to shut his eyes against the light before him. He does a wrong not to heed the "signs and signals" seen by him. It may be well concluded that he is avoiding notice of that which he in reality believes or knows.

Morse v. Morse, 30 B.R. 52, 55 (1st Cir. 1983).

The record before the Florida probate and appellate courts showed that as early as September of 1989 but no later than February of 1990, Raine had concrete, documentary proof that Gleason's estate was being administered and that in due course the estate would be closed and the personal representative discharged. This evidence, as the Florida courts found, was sufficient to put Raine on notice that he needed to take action in the probate court or risk losing his claim.

C. Even If the Probate Court Had Reopened the Estate, Raine's Claim Would Have Been Barred by the Florida Statute of Limitations for Contract Claims

The merit of Raine's claims was tenuous at best. His claims for breach of contract and declaratory relief arose out of an agreement. The limitations period for contract

claims is five years under Florida law.[3] Since Raine sued on the contract in April of 1986, the limitations period on his claim would have run, at the very latest, in April of 1991. Raine did not petition to reopen the estate until March of 1992, almost a year after the limitations period ended. Thus, the probate court's decision not to reopen the estate merely obviated the need to later decide that the claims must be dismissed in any event because barred by the applicable limitations period.

CONCLUSION

As we have shown, this is a unique case, a product of unique circumstances. Given these unique facts and circumstances, the Florida courts found that Raine's petition – coming as it did fourteen months after discharge of the personal representative – was much too late.

Raine had notice and knowledge of the estate administration proceedings, and the opportunity to petition for an extension of time to file his claim while the estate was still open. He did not act on his knowledge or take advantage of the procedures available to him. Instead, he slept on his rights.

Moreover, everything that *Pope* requires has been implemented in Florida. It is now a statutory requirement in Florida that personal representatives send "known or

[3] Section 95.11(2)(b), Florida Statutes (1991), App. 6a.

ascertainable" creditors actual notice of administration.[4] And Rule 5.495, permitting an extension of time, was in place both when Raine learned that the estate was being administered and while the estate was open.

Finally, the claim that Raine sought to assert in the probate court was based on contract claims barred by Florida's statute of limitations.

The Florida courts thus correctly refused to reopen the estate. Their decisions were entirely fair. The petition for a writ of certiorari should be denied.

Respectfully submitted,

DANIEL S. PEARSON
Counsel of Record
LUCINDA A. HOFMANN

HOLLAND & KNIGHT
701 Brickell Avenue
Miami, Florida 33131
(305) 374-8500

Attorneys for Respondent, Marilyn Gleason

---

[4] *See* Florida Probate Rule 5.240(a) & (e) (1988), App. 3a-4a; Florida Probate Rule 5.240(e) (1992), App. 4a-5a; section 733.212(4)(a), Florida Statutes (1991), App. 5a.

INDEX TO APPENDIX

	Page
Florida Probate Rule 5.495	1a
Section 733.702(3), Florida Statutes (1991)	2a
Florida Probate Rule 5.240(a) (1988)	3a
Florida Probate Rule 5.240(e) (1988)	3a
Florida Probate Rule 5.240(e) (1992)	4a
Section 733.212(4)(a), Florida Statutes (1991)	5a
Section 95.11(2)(b), Florida Statutes (1991)	6a

APPENDIX

Florida Probate Rule 5.495, added September 29, 1988, effective January 1, 1989:

RULE 5.495. PETITION TO EXTEND TIME FOR FILING CLAIM

If a creditor of the estate files a petition to extend the time for filing a claim, after the time allowed by law for presenting claims, or a petition to require payment of claim, which claim was filed after the time allowed by law for presenting claims, and the petition alleges that the creditor was known to or reasonably ascertainable by the personal representative, but was not served with a copy of the notice of administration, such petition shall specifically allege facts showing that such creditor was known to or reasonably ascertainable by the personal representative. It shall also include a verified statement alleging either (i) the creditor did not have actual knowledge of those matters relating to creditors' claims required to be set forth in the notice of administration during the period allowed for filing claims against the estate, or (ii) facts sufficient to obtain relief under Florida Rule of Civil Procedure 1.540(b).

Committee Notes

It is contemplated that substantially more creditors who have missed the filing deadline imposed by F.S. 733.702 will be filing a petition to extend the time for filing claim, under the authority of *Tulsa Professional Collection Services, Inc. v. Pope*, 108 S. Ct. 1340 (1988). This is a new

procedure which requires specificity in the relevant factual allegations of any petition based upon the concepts discussed in that case. If the creditor had knowledge of the administration proceedings, but too late in the period to accomplish the filing of the claim, such allegation specifically describing those facts meets the requirements of this rule. Furthermore, it does not appear that inadvertence or surprise in Fla.R.Civ.P. 1.540(b)(1) or matters relating to judgments in (4) and (5) of that rule have application in this context.

Section 733.702, Florida Statutes (1991):

733.702 Limitations on presentation of claims. –

* * *

(3) Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed on the grounds of timeliness or otherwise unless the court extends the time in which the claim may be filed. Such an extension may be granted only upon grounds of fraud, estoppel, or insufficient notice of the claims period. No independent action or declaratory action may be brought upon a claim which was not timely filed unless such an extension has been granted. If the personal representative or any other interested person serves on the creditor a notice to file a petition for an extension or be forever barred, the creditor shall be limited to a period of 30 days from the date of service of the notice in which to file a petition for extension.

* * *

Florida Probate Rule 5.240 (1988):

RULE 5.240. NOTICE OF ADMINISTRATION

(a) Publication and service. After issuance of letters, the personal representative shall publish a notice of administration and promptly serve a copy of the notice in the manner provided for formal notice in these rules on the surviving spouse and all beneficiaries known to the personal representative who have not been barred by law. Within 2 months after first publication of notice of administration the personal representative shall serve a copy of the notice on all persons having claims or demands against the estate whose name and location or address are known to or reasonably ascertainable by the personal representative. No such notice need be served on a creditor who has filed a claim in the proceedings or whose claim has been included in a personal representative's proof of claim filed in the proceedings, or on a creditor whose claim has been paid.

* * *

(e) Statement regarding creditors. Within four months after the date of the first publication of notice of administration, the personal representative shall file a verified statement that he has made diligent search to ascertain the names and location or mailing addresses of persons having claims or demands against this estate. Such statement shall also contain the following information as to all such persons who have not filed a timely claim or who have not had their

claim included in a personal representative's proof of claim filed in the proceedings:

(1) the name and, if known, the address of such person;

(2) an indication whether such person has been served with a notice of administration or otherwise received actual notice of the proceedings.

Committee Notes

* * *

1988 Revision: The obligation to mail notice of administration to all known or reasonably ascertainable creditors has been added to comply with the dictates of *Tulsa Professional Collection Services, Inc. v. Pope,* 108 S.Ct. 1340 (1988).

* * *

Florida Probate Rule 5.240 (1992):

RULE 5.240. NOTICE OF ADMINISTRATION

* * *

(e) Statement Regarding Creditors. Within 4 months after the date of the first publication of notice of administration, the personal representative shall file a verified statement that diligent search has been made to ascertain the name and address of each person having a claim against the estate. The statement need not include persons who have filed a timely claim or who were included in the personal representative's proof of claim. The statement shall indicate the name and address of each person at that

time known to the personal representative who has or may have a claim against the estate and whether such person was served with a notice of administration or otherwise received actual notice of the information contained in the notice of administration.

Committee Notes

* * *

1992 Revision: Former subdivision (e) revised and reinstated to emphasize need for personal representative to determine all known or reasonably ascertainable creditors.

Section 733.212, Florida Statutes (1991):

733.212 Notice of administration; filing of objections and claims. –

* * *

(4)(a) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable and shall serve on those creditors a copy of the notice within 3 months after the first publication of the notice. Impracticable and extended searches are not required. Service is not required on any creditor who has filed a claim as provided in the part; a creditor whose claim has been paid in full; or a creditor whose claim is listed in a personal representative's timely proof of claim if the personal representative notified the creditor of that listing.

* * *

Section 95.11, Florida Statutes (1991):

95.11 Limitations other than for the recovery of real property. – Actions other than for recovery of real property shall be commenced as follows:

* * *

(2) WITHIN FIVE YEARS. –

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument.

* * *